

## **MINUTES**

### **MONTANA SENATE 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON EDUCATION AND CULTURAL RESOURCES**

**Call to Order:** By **CHAIRMAN BILL GLASER**, on January 26, 2001 at 3:00 P.M., in Room 405 Capitol.

#### **ROLL CALL**

**Members Present:**

Sen. Bill Glaser, Chairman (R)  
Sen. Jack Wells, Vice Chairman (R)  
Sen. Dale Berry (R)  
Sen. John C. Bohlinger (R)  
Sen. Edward Butcher (R)  
Sen. John Cobb (R)  
Sen. Jon Ellingson (D)  
Sen. Jim Elliott (D)  
Sen. Alvin Ellis Jr. (R)  
Sen. Don Ryan (D)  
Sen. Debbie Shea (D)  
Sen. Mike Sprague (R)  
Sen. Mignon Waterman (D)

**Members Excused:** Sen. Sam Kitzenberg (R)

**Members Absent:** None.

**Staff Present:** Linda Ashworth, Committee Secretary  
Eddy McClure, Legislative Branch

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing(s) & Date(s) Posted: SB 193, 1/11/2001; SB 111,  
1/11/2001  
Executive Action: SB 140; SB 35; SB 233

#### **HEARING ON SB 193**

**Sponsor:** SEN. JOHN COBB, SD 25, Augusta

**Proponents:** Robert Carr, Perkins Task Force

**SEN. MIGNON WATERMAN, SD 26, Helena**  
**Judy Smith, W.O.R.D, Missoula**  
**Arlene Parisot, Director of Workforce Development,**  
**Office of Commission of Higher Education**  
**Dr. Richard Crofts, Commissioner of Higher**  
**Education**

**Opponents:**        **Carol Perlinski, Self, Bozeman**

**Opening Statement by Sponsor:**

**SEN. JOHN COBB** opened on SB 193. He explained that this bill is an act making permanent the designation of the Board of Regents as the eligible agency for administering the Carl D. Perkins Act Vocational Education Programs in Montana. **SEN. COBB** presented the committee with a copy of page 1842-1843 from the Montana Session Laws 1999, which explained the language in the bill, **EXHIBIT(eds21a01)**.

***{Tape : 1; Side : A; Approx. Time Counter : 0 - 2}***

**Proponents' Testimony:**

**Robert Carr, Perkins Task Force Member**, shared information from the Task Force Committee, reading a letter from the Task Force Chairman, **William R. Roope, EXHIBIT(eds21a02)**. **Mr. Carr** also read a letter signed by representatives from the three community colleges in the state which were also in support of SB 193.

**SEN. MIGNON WATERMAN** offered support for SB 193. **SEN. WATERMAN** expanded on the history of the bill stating that she carried legislation, last session, to select the sole state agent. She asserted that technical education is critical in the state of Montana and charged that K-12 and higher education need to work together.

**Judy Smith, W.O.R.D. in Missoula**, testified that her community based organization has received this type of funding since the 1980's. She briefly commented on her experience with the administration of the funds and stated that one of the outcomes of the past year was a firm determination to find more money for this kind of training. **Ms. Smith** maintained that the commitment that has been made to improve vocational education, making it an economic development tool, should be rewarded.

**Arlene Parisot, Commission of Higher Education**, endorsed SB 193. **Ms. Parisot** expounded on **SEN. WATERMAN'S** testimony echoing the idea of working together and recommended an advisory committee.

She elaborated that federal funds could not supply all the needs of technical vocational education. Policies need to be innovative and meet the needs of a skilled work force, which would encourage the development of new programs.

**Dr. Richard Crofts, Commissioner of Higher Education**, commented that they have engaged in efforts to increase funding for technical education. Secondly, he charged that they would establish an advisory committee while supporting SB 193.

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**Opponents' Testimony:**

**Carol Perlinski, representing herself**, shared the minority opinion of the board in opposition to SB 193. **Ms. Perlinski** submitted written testimony, **EXHIBIT(eds21a03)**. **Ms. Perlinski** also submitted her final report on the Perkins Task Force, **EXHIBIT(eds21a04)** along with a graph explaining the differences between the old law and the new, **EXHIBIT(eds21a05)** and information regarding the grant allocations for 2000, **EXHIBIT(eds21a06)**.

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**Questions from Committee Members and Responses:**

**SEN. MIKE SPRAGUE** referred to the size of the advisory committee and wondered what the tie breaking philosophy would be to balance out special interests. **Carol Perlinski** felt the committee would have done an adequate job with four members, two people from secondary and two from post secondary education.

**SEN. SPRAGUE** wondered how much money was involved in the Perkins Grant. **Arlene Parisot** reported that the fund contains \$5,540,714 for this fiscal year and there is also a tech. prep. allocation of \$516,332.

**SEN. SPRAGUE** related his experience visiting the Pine Hills School where Architectural Engineering was being taught as a course. **SEN. SPRAGUE** questioned whether the board would deal with allocation of realistic funds. **Ms. Parisot** claimed the Perkins Grant does address individuals residing in correctional institutions, as well as institutions serving students with disabilities, recognizing that those individuals do need training to reenter the real world. She hoped that the training of these individuals would have a positive impact.

**SEN. SPRAGUE** quizzed **Ms. Parisot** on her recommendation that the organization of the board should be made up of people who would be impacted by the funds as well as those responsible for the administration of those funds.

**SEN. DEBBIE SHEA** asked **Carol Perlinski** to clarify who she was representing. **Ms. Perlinski** stated she was representing herself as a minority report to the task force. **SEN. SHEA** wondered if the community based organizations were active in Bozeman. **Ms. Perlinski** stated that the Perkins Law does not allow the community based organizations to receive direct funding. **Ms. Perlinski** explained the qualifications for receiving Perkins funds.

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**Closing by Sponsor:**

**SEN. COBB** closed on SB 193.

*{Tape : 1; Side : B; Approx. Time Counter : 9 - 10}*

**SEN. SHEA** informed the chairman that there was a person in the audience that could provide informational testimony. **VICE-CHAIRMAN WELLS** stated that if there was no objection from the committee he would allow the testimony. There was no objection.

**Informational Testimony:**

**Maurice James, United States Department of Education**, indicated he would respond to any questions in relation to the law. **Mr. James** reiterated that the state must identify one agency as the sole recipient. **Mr. James** read the definition of eligible recipients (sole state agency). He quoted from the Carl D. Perkins Vocational and Applied Technology Education Amendments of 1998. **Mr. James** advised the committee on the four items that the sole state agency would be accountable for.

**SEN. ALVIN ELLIS** asked for clarification on why community based organizations were removed from the plan. **Mr. James** alleged that the Congress changed the concept of how the funds were to be used. **Mr. James** enjoined that any agency has the ability or the authority to contract to other agencies within their jurisdiction, if the services provided meet the needs of their program.

**SEN. ED BUTCHER** wondered if a conflict evolved due to post secondary education taking money from secondary education. **Ms.**

**Perlinski** recounted that more dollars are going to more secondary programs so the control should be with secondary education.

**SEN. BUTCHER** wondered if secondary education would receive less if the control was shifted to post-secondary education. **Ms. Perlinski** believed the problem was with the task force and the decision on how the money was divided.

**SEN. SPRAGUE** wondered if it was more or less prevalent to have these programs managed by the secondary higher education programs vs. post-secondary. **Mr. James** stated this situation is not unique and many states are grappling with this same issue. **Mr. James** explained the history of the grant which dealt with occupational demand. He charged that this piece of legislation is student centered. The emphasis is placed on the curriculum and the connection of vocational and academics. The emphasis is on what the student can do, not specifically what the student can do in a specific job.

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# HEARING ON SB 111

**Sponsor:** **SEN. ALVIN ELLIS, SD 12, Red Lodge**

**Proponents:** **Bob Vogel, Montana School Boards Association**  
**Dave Puyear, Montana Rural Education Association**  
**REP. DON HEDGES, HD 97, Antelope**  
**Jack Gunderson, Self, Cascade County**  
**Marilyn Hayes, Self, Power**

**Opponents:** **Emil Neumann, Self, Power**  
**Anthea George, Self, Bozeman**  
**Mary Somerfeld, Self, Power**  
**Gwen Anderson, Teton County Superintendent of**  
**Schools**  
**Debbie Laubach, Self, Power**  
**Ron Laubach, Self, Power**

## Opening Statement by Sponsor:

**SEN. ELLIS** opened on SB 111. He introduced the bill stating it is an act that would revise the laws related to school boundary transfers, requiring approval by the boards of trustees of both the transferring and receiving school districts. **SEN. ELLIS** proposed an amendment to the bill, (SB011101.aem)

**EXHIBIT(eds21a07)**, stating that sections four and five would replace the original bill. **SEN. ELLIS** also recommended the bill be put into a subcommittee.

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*{Tape : 2; Side : A; Approx. Time Counter : 0 - 7}*

**Proponents' Testimony:**

**Bob Vogel, Montana School Boards Association**, provided testimony in support of SB 111. **Mr. Vogel** explained the intent of this legislation. On September 19, 2000 the Montana Supreme Court declared that 20-6-320 was unconstitutional on the grounds that it does not constrain a county superintendent's discretion in order to grant or deny a transfer. The decision was left up to the county superintendent's unguided judgement and therefore the statute was an unconstitutional delegation of legislative authority. **Mr. Vogel** maintained the Supreme Court's ruling does place a greater urgency upon this legislation because without it there would be no guidance.

**Dave Puyear, Montana Rural Education Association**, supported SB 111 declaring that something has to be done to alleviate confusion. **Mr. Puyear** recommended county superintendents remain in the process and strongly urged consideration of this matter.

**REP. DON HEDGES, HD 97**, rose in support of SB 111 and offered an amendment (SB011103.aem), **EXHIBIT(eds21a08)** asking that it be considered in the subcommittee.

**Jack Gunderson, representing himself**, presented support for SB 111 as amended with **REP. HEDGES'** amendment. **Mr. Gunderson** requested that the public be notified concerning the date and time of the subcommittee hearing.

**Marilyn Hayes, representing herself**, rose in support of SB 111.

**Opponents' Testimony:**

**Emil Neumann, representing himself**, stood in opposition to SB 111. **Mr. Neumann** submitted written testimony, **EXHIBIT(eds21a09)**.

**Anthea George, representing herself**, opposed SB 111 relating a personal situation. She submitted addition information to punctuate her testimony, **EXHIBIT(eds21a10)**.

**Mary Somerfeld, representing herself**, rose in opposition to SB 111. **Ms. Somerfeld** submitted written testimony, **EXHIBIT (eds21a11)**.

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**Gwyn Andersen, Teton County Superintendent**, spoke in opposition to SB 111. **Ms. Andersen** stated that the Vaughn/Power land transfer affects Teton County. She stated that there is already a process in law where both boards of trustees agree they can move the boundaries of their school district. It would be redundant to put that language into this law. It is 20-6-214 and 20-6-322 that states boundary commission responsibilities. She asserted that if the two boards come to their county superintendent they can call a boundary commission meeting and adjust school boundaries. She explained that after reading the amendments the bill would come back full circle to the law as it exists today.

**Debbie Laubach, representing herself**, purported opposition to SB 111. She asked that the effective date of the bill be changed from July, retroactive to the date of the Supreme Court decision. **Mrs. Laubach** submitted written testimony, **EXHIBIT (eds21a12)**.

**Ron Laubach, representing himself**, affirmed opposition to SB 111 believing the bill would create more problems than it would solve. **Mr. Laubach** felt that as long as the economic impact is not significantly destructive on the departed school district the transfer should be justified. He argued the bill would deprive the residents of the area, desiring to be transferred, the inability to ever qualify for a transfer. Furthermore, he contended the county superintendents should be given guidelines to adhere to, leaving the law as it now stands.

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**Informational Testimony:** None

**Questions from Committee Members and Responses:** None

**Closing by Sponsor:**

**SEN. ELLIS** closed on SB 111.

**VICE CHAIRMAN WELLS** appointed **SEN. ELLIS, SEN. JOHN BOHLINGER AND SEN. JON ELLINGSON** to a subcommittee to work on SB 111. **SEN. ELLIS** was appointed chairman.

**{Tape : 2; Side : B; Approx. Time Counter : 10 - 21}**

**CHAIRMAN BILL GLASER** asked for a short report regarding the subcommittee working on SB 65. **SEN. WELLS** summarized the activity of the subcommittee. In addressing input from proponents and opponents the subcommittee tried to include everyone's concerns. The determination was made to include three sets of amendments. The amendments will be brought before the full committee for consideration.

**Eddye McClure** explained the differences in the amendments.

**SEN. WATERMAN** wondered if any of this would be affected by the boundary issue in SB 111 and if so, suggested that executive action be done on the same day.

**SEN. ELLIS** recounted the bills overlap but are not interdependent.

**{Tape : 2; Side : B; Approx. Time Counter : 21 - 32}**

**EXECUTIVE ACTION ON SB 35**

**Motion:** **SEN. JOHN COBB** moved that **SB 35 BE AMENDED** (SB003501.aem) **EXHIBIT** (eds21a13).

**Discussion:**

**Eddye McClure** explained the amendment would make the bill permissive rather than mandatory.

**SEN. DEBBIE SHEA** inferred that the law already allows a school to have a uniform policy.

**Vote:** The motion to adopt the amendment (SB003501.aem) **passed** unanimously.

**Motion:** **SEN. WELLS** moved that **SB 35 DO PASS AS AMENDED**.

**Discussion:**

**SEN. JIM ELLIOT** questioned the need for more laws. **CHAIRMAN GLASER** stated that **SEN. JOHN COBB** and **SEN. AL BISHOP** had stated the need for such bill.

**SEN. JOHN BOHLINGER** responded that the bill has merit that would allow clear understanding of what was intended in SB 35.



**SEN. JON ELLINGSON** elaborated that the law already allows this authority and SB 65 is an unneeded bill. The hearing has called attention to this matter and **SEN. ELLINGSON** felt this was adequate at this time.

**SEN. BUTCHER** echoed his support for the bill as amended.

**Substitute Motion/Vote:** **SEN. WATERMAN** made a substitute motion that SB 35 BE TABLED. Substitute motion failed 6-7 with Ellingson, Elliott, Kitzenberg, Ryan, Shea, and Waterman voting aye.

**Vote:** **SEN. WELLS'** motion that SB 35 DO PASS AS AMENDED carried 8-6 with Ellingson, Elliott, Kitzenberg, Ryan, Shea, and Waterman voting no.

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**EXECUTIVE ACTION ON SB 140**

**Motion:** **SEN. WELLS** moved that SB 140 BE AMENDED (SB014001.aem), **EXHIBIT**(eds21a14).

**Discussion:**

**SEN. WELLS** explained the technical amendment to strike the word "public" in the title.

**Vote:** Motion to adopt the amendment (SB014001.aem) carried unanimously.

**Motion:** **SEN. WELLS** moved that SB 140 DO PASS AS AMENDED.

**Discussion:**

**SEN. ELLIOT** asked that a letter from **Reverend Stephen Rowan, Ph.D., Interim President of Carroll College**, be entered into the record, **EXHIBIT**(eds21a15).

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**SEN. WATERMAN** pointed out that federal statutes require this information to be available from public school libraries in regards to minors. State law prohibits this disclosure in local libraries. The problem arises when a school library is also the public library, which would cause a conflict between state and federal law.

**SEN. WELLS** related his research in trying to find library policies around the state. He had found that many libraries did not have policies or forms to address this issue, concluding that libraries do not have set policies.

**SEN. SHEA** requested a clarification from **Karen Strege, State Librarian**, regarding library policies. **Dr. Strege** quoted state law as saying, " a person can give written consent to another to access his or her library records according to procedures as determined by the library". She summarized the library procedures for several libraries around the state. **Dr. Strege** apologized for any confusion that may have arisen from her previous testimony.

**SEN. WELLS** meant to impart to **Dr. Strege** that there were no forms or procedures at the libraries that he had contacted and did not mean to apply malfeasance on their part.

**SEN. ELLINGSON** professed his respect for **SEN. WELLS'** motivation but reiterated he could not support SB 140.

**SEN. BUTCHER** articulated his strong support for this bill.

**SEN. ELLIOT** related a personal story that emphasized his opposition to SB 140, charging it would create distrust between a parent and child.

**Vote:** **SEN. WELLS'** motion that **SB 140 DO PASS AS AMENDED** carried 8-6 with Cobb, Ellingson, Elliott, Kitzenberg, Ryan, and Shea voting no.

*{Tape : 3; Side : B; Approx. Time Counter : 0 - 30}*

#### **EXECUTIVE ACTION ON SB 233**

**Motion:** **SEN. COBB** moved that **SB 233 BE AMENDED** (sb023301.AEM), **EXHIBIT**(eds21a16).

#### **Discussion:**

**SEN. DON RYAN** explained that the amendment fixes the cost of fingerprinting. **SEN. RYAN** reported that he did not want this to become another burden that someone would have to pick up.

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**SEN. SPRAGUE** asked if the amendment had been run by the bill's sponsor. **SEN RYAN** stated **SEN. DALE MAHLUM** understood what the

amendment would address. **SEN. RYAN** referred to the amendment Page 2, line 24 through line 25, which would allow the school districts to check arrest records and convictions. This would eliminate the section that states the school district may not use information regarding arrests without conviction.

**SEN. WELLS** asked for clarification as to the intent of the original wording. **SEN. RYAN** stated that if the clause is left in the bill then the districts could not use any information regarding a person unless the it was a conviction. **SEN. RYAN** clarified that he felt a district should be able to use any information discovered on a candidate applying for certification.

**SEN. COBB** advised that a person is innocent until proven guilty and if a person is not convicted then the information should not be used against them. **SEN. COBB** asked that #2, which deals with that issue, be segregated from the vote.

**SEN. SPRAGUE** asked for clarification to the meaning of the wording and what the change does to the bill. **SEN. RYAN** stated any information that may be discovered about a candidate can not come into deliberations if the person was not found guilty on that count.

**Motion:** **SEN. COBB** moved **TO SEGREGATE #2 FROM THE AMENDMENT AND VOTE ON #1 AND #3 SEPARATELY.**

**Vote:** The motion to adopt items #1 AND #3 of the amendment (SB023301.aem) **carried unanimously.**

**Discussion:**

**SEN. SPRAGUE** wondered if information regarding a person, currently under investigation for a crime, could be used in the hiring process. **SEN. ELLINGSON** responded that the information could be used, in the process, if the information was obtained through the reference and evaluation process from the previous job.

**SEN. SPRAGUE** pronounced that the information should be available since many terminated individuals receive good recommendations even though the person has been problematic. **SEN. RYAN** explained that the amendment uses the word "arrest".

**SEN. SHEA** stated that she felt the only redeeming part of this legislation is what **SEN. RYAN** is now trying to remove. She stressed her disapproval in reference to the list of things that

will go against young teachers when they are applying for jobs, charging that a great disservice would be done to young people.

**SEN. RYAN** maintained that schools must do a thorough check because of the liability issue. He reminded the committee that most states do require fingerprinting for licensing.

**SEN. BUTCHER** declared his support for the use of all information regarding a person's arrest record, when applying for a job.

**SEN. ELLINGSON** reminded the committee that the amendment only pertains to non-certified applicants and volunteers and not to teachers. He contended that attention is being drawn from the interview and background process which should be done in a thorough and complete manner when hiring school personnel. **SEN. ELLINGSON** felt that this would be sufficient to keep the wrong type of teachers out of our schools.

**SEN. RYAN** related information on the workings of child pedophiles, defending the need for this amendment.

**SEN. ELLIOT** disagreed with **SEN. RYAN** on his assumption that people that are arrested are automatically guilty.

**SEN. ELLINGSON** called for the question stating his assumption that an affirmative vote strikes the wording. **CHAIRMAN GLASER** agreed.

**SEN. SHEA** commented that fingerprinting isn't always the answer. A thorough background check is the correct answer.

**SEN. SPRAGUE** contended that he had never had an employee give a bad reference.

**Vote:** To adopt item #2 on the amendment (SB023301) failed 4-10 with Butcher, Ryan, Sprague, and Wells voting aye.

**Motion/Vote:** **SEN. COBB** moved that SB 233 BE AMENDED, **EXHIBIT**(eds21a17), (SB023303.aem). Motion carried unanimously.

**Motion:** **SEN. SHEA** moved that SB 233 BE AMENDED, **EXHIBIT**(eds21a18) (SB023305.aem).

**Discussion:**

**SEN. WATERMAN** asked for clarification on how the fees for fingerprinting would be collected. **Madalyn Quinlan, Office of Public Instruction**, contended the applicant would pay the fee to the **Office of Public Instruction** and then thirty two dollars of

that fee would be sent to the Department of Justice which would cover the cost of the background check and the processing fee.

**SEN. SHEA** referred to the ACLU sheet that she handed out, **EXHIBIT (eds21a19)**, asking the committee to consider the figures that show teachers are not on the list of perpetrators against children.

*{Tape : 4; Side : A; Approx. Time Counter : 0 - 32}*

**Eddye McClure** explained the proposals on the amendment (SB023305.aem).

**SEN. BUTCHER** contended this amendment would completely change the bill, tying the hands of school boards by concealing information.

**SEN. ELLIS** opposed striking section one of the amendment, citing previous testimony which stated that 1500 people apply for certification in the state of Montana, the vast majority of them being from out of state. **SEN. ELLIS** felt that the past history of these people should be public record.

**SEN. SHEA** defended the amendment as doing just that. Any violent conviction or sexual offense would be made available.

**Vote:** **SEN. SHEA'S** motion that **SB 233 BE AMENDED** failed 7-7 with **Cobb, Ellingson, Elliott, Kitzenberg, Shea, Waterman, and Wells** voting aye.

**Motion/Vote:** **SEN. COBB** moved **TO SEGREGATE #6 FROM AMENDMENT** (SB023305.aem) and **make it an amendment. Motion carried unanimously.**

**Motion:** **SEN. ELLINGSON** moved that **SB 233 BE AMENDED**, (SB023308aem) **EXHIBIT (eds21a20).**

**Discussion:**

**SEN. ELLINGSON** explained his confusion with the language of the bill which prohibited the fingerprinting of existing teachers, saying that it was not as clear as it could be. This amendment would specify that on or after July 1, 2001 a school district may not require fingerprinting of currently certified teachers. He asked if current federal law allows school districts to fingerprint.

**Eddye McClure** clarified current federal law and how it relates to SB 233. **SEN. ELLINGSON** asked if federal law allows the states to

establish the authority to institute their own fingerprinting policies. **Ms. McClure** stated that it was her understanding that the federal law allows the state to set up its own system and in the absence of the system the schools may do their own fingerprinting.

**SEN. BUTCHER** recommended that the words, "currently certified", be inserted which would make the section clearer. **SEN. ELLINGSON** agreed.

**Ms. McClure** asked that the question be redirected to **Wilbur Rehman, Manager of the Criminal Justice Information Services Project** at the **Department of Justice**. **Mr. Rahman** clarified that federal law allows any organization, non-profit or profit, that deals with the care for children, the disabled, or the elderly to conduct a fingerprint based background check. The federal law does not preclude states to be more restrictive in the use of that background check.

**SEN. ELLINGSON** hypothesized that if this amendment is adopted it would become more restrictive to school districts. **Mr. Rahman** answered that currently the school district can do a background check on anyone. The amendment would state that certain groups would be exempt from the process.

**SEN. SHEA** reconfirmed her concern that the amendment would protect teachers but not the young teachers who have no one to speak on their behalf.

**Vote:** **SEN. ELLINGSON'S** motion that **SB 233 BE AMENDED** passed 13-1 with **Elliott** voting no.

**Motion/Vote:** **SEN. COBB** moved that **SB 233 DO PASS AS AMENDED**. Motion failed 7-7 with **Berry, Bohlinger, Butcher, Ellis, Glaser, Ryan, and Sprague** voting aye.

**Motion:** **SEN. ELLIOTT** moved that **SB 233 BE TABLED**.

**SEN. ELLIOTT** withdrew his motion to **TABLE SB 233**.

*{Tape : 4; Side : B; Approx. Time Counter : 0 - 32}*

**EXHIBIT (eds21a21) .**

**EXHIBIT (eds21a22) .**

**ADJOURNMENT**

Adjournment: 7:25 P.M.

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SEN. BILL GLASER, Chairman

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LINDA ASHWORTH, Secretary

BG/LA

**EXHIBIT** (eds21aad)